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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,132	12/14/2001	Carmen Flosbach	FA1043 US NA	8944

23906 7590 09/13/2004

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EXAMINER

MICHENER, JENNIFER KOLB

ART UNIT PAPER NUMBER

1762

DATE MAILED: 09/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 10/017,132	<b>Applicant(s)</b> FLOSBACH ET AL.	
	<b>Examiner</b> Jennifer K. Michener	<b>Art Unit</b> 1762	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-12.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The reply filed 8/5/2004 fails to place this application in condition for allowance.
2. The proposed amendments will not be entered because they raise new issues that would require further consideration and/or search and they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

Applicant has amended the independent claim from a method for "repairing coated substrate surfaces", disclosed merely in the preamble, by applying a coating in blemished areas (which is taught by Goodman), to a method "whereby the coating on the surface of the substrate is repaired". This raises new issues for consideration and search. The new limitation in the body of the claim carries patentable weight which was not considered in the previous office actions. Additionally, repairing a substrate surface that is coated is different than repairing the coating on a surface.

3. For purposes of Appeal, the amendments will not be entered.
4. The status of claims is as follows: Claim 1-12 are rejected.

### ***Response to Arguments***

5. Applicant's arguments filed 8/5/2004 have been fully considered but they are not persuasive.

Applicant disagrees with Examiner's assertions of the previous office action and reasserts all of the arguments previously presented in 3 February 2004.

In response, Examiner maintains the assertions and rejections of the previous office actions.

Applicant newly urges Examiner to point to a citation where the reference teaches repairing the coating on a surface.

Examiner notes that, because this limitation has not been entered, it has not been considered.

Applicant newly argues that the present invention, read as a whole, is inherently understood to NOT contain fiber reinforcements. Additionally it is noted that fiber would be aesthetically unpleasing.

Examiner notes that claims do not exclude the use of fiber, nor do claims require or quantify aesthetic appearance.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer K. Michener whose telephone number is (571) 272-1424. The examiner can normally be reached on Monday through Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on 571-272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'JKM', with a long horizontal flourish extending to the right.

Jennifer Kolb Michener  
Patent Examiner  
AU 1762  
9/9/04